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November 16, 2017

The Honorable Ajit Pai, Chairman
The Honorable Mignon Clyburn, Commissioner
The Honorable Michael O'Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Subject: Rural Health Care Support Mechanism FY2018 Filing Window
WC Docket 02-60

Dear Chairman Pai and FCC Commissioners:

Thank you for your support of the Rural Health Care Program. **Catholic Health Initiatives (CHI)** is writing today concerning the Funding Year 2018 filing window for the Healthcare Connect Fund, particularly how the same adversely impacts consortium applicants. USAC has announced that the filing window for FY2018 will open on February 1 and close on April 30, 2018. USAC will allow the filing of a FY2018 FCC Form 461 to initiate competitive bidding on January 1, 2018. In effect this means that applicants will only have 120 days to initiate competitive bidding, evaluate bids received, choose the most cost-effective service provider, negotiate contract terms and complete the FCC Form 462. **This is not enough time for consortium applicants to complete the funding request process.**

The FCC has a stated goal of "fostering the development and deployment of broadband healthcare networks, particularly networks that include HCPs that serve rural areas."¹ While specific, detailed information is not available on the USAC website, it has been reported previously that there are several hundred consortium applicants participating in the Healthcare Connect Fund. And, for the first time in the history of the Rural Healthcare Support Mechanism, the funding cap of \$400 Million was breached in Funding Year 2016.² USAC has announced that the cap has also been breached for Funding Year 2017.³

¹ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*). ¶ 39

² <http://www.usac.org/rhc/funding-information/default.aspx?pgm=hcc> last accessed November 6, 2017.

³ Rural Health Care Committee Briefing Book – July (<http://www.usac.org/res/documents/about/pdf/bod/materials/2017-07-24-rhc-briefing-book.pdf>) last accessed November 6, 2017. See page 22 which states that total gross demand for FY2017 is \$567,276,742, which includes funding requests from 213 consortia applicants.

The FCC has determined throughout the existence of the Rural Health Care program that competitive bidding is an essential pillar of the program to ensure that applicants choose the most cost-effective service available. Competitive bidding is particularly important for consortium applicants that could be bidding for services for dozens, or even hundreds, of healthcare providers. The FCC recognized the same in the Healthcare Connect Fund Order, stating:

Applicants may submit Form 461 starting 180 days before the beginning of the funding year. Our experience in the Pilot Program is that it can take as long as six months for more complex projects to complete bid evaluation and select a vendor. To allow sufficient time to complete this process prior to the beginning of the funding year, HCPs should submit a Form 461 as soon as possible after the filing window opens.⁴

Consortium applicants face particular hurdles to obtaining funding that is unique to the consortia application process. While individual healthcare providers may be able to complete the funding request process in the 120 days allowed for FY2018, it will be nearly impossible for consortium applicants. A consortium applicant must complete the following steps in order to request funding:

1. New members to the consortium must have an FCC Form 460 submitted and processed. USAC is allowed 30 calendar days to process the Form 460.⁵
2. The FCC Form 461 “package” can be filed January 1, 2018. But, this does not mean that a consortium applicant’s Form 461 and RFP will be immediately posted to USAC’s website. USAC reviews the Form 461, RFP and Network Plan submitted by consortium applicants prior to posting to the website. The *Healthcare Connect Fund Order* states “USAC may institute reasonable procedures for processing Form 461 and associated documents and may provide applicants with an opportunity to correct errors in the submissions.”⁶ Our experience is that the more complex the RFP, the longer it takes USAC to review the Form 461 “package”. While the Form 461 will be available on January 1st, consortium applicants will not be able to actually initiate competitive bidding until USAC completes its review and actually posts the Form, RFP and Network Plan to its website. We can find no processing deadlines imposed by the FCC on USAC processing of the Form 461 package. Even if we file the Form 461 on January 1st, it could be fifteen, thirty, sixty or even ninety days before the competitive bid process begins.

⁴ *Healthcare Connect Fund Order* ¶ 242.

⁵ *Id.* ¶ 215. See “USAC should notify each applicants of its determination (or whether it needs additional time to process the form) within 30 days of receipt of Form 460.

⁶ *Id.* ¶ 243.

3. The FCC *encourages* consortium applicants with “larger, more complex projects”⁷ to consider a posting period longer than the required minimum of 28 days. The FCC explicitly notes that: “Allowing sufficient time and opportunity for all potential bidders to develop and submit bids can lead to more and better bids, and has the potential to enhance the quality and lower the price of services ultimately received.” Only allowing 120 days from the Form 461 being made available for FY2018, to the closing of the first filing window to request funding actually *discourages applicants* from utilizing a longer bidding period to ensure receipt of the best possible bids. Applicants simply will not have enough time to utilize a bidding period greater than 28 days.
4. Once competitive bids are received, applicants must begin to review bids received. A quality competitive bid should result in receipt of bids from multiple providers. Our experience is that the time it takes to adequately review bids based on the evaluation factors takes time. Applicants should not be forced to quickly review the bids received solely because of an arbitrary deadline (April 30th funding request requirement) chosen by USAC without input from program applicants. The FCC has previously indicated its awareness that numerous bids – and even just a large consortium applicant with two or more bids, will result in significant paperwork related to the review of the bids received.⁸ We have found that the more sites included in the competitive bid process has a direct impact on the amount of time necessary to review bids received. Our experience is that it takes a minimum of fifteen days, but not less than 30 days to thoughtfully and thoroughly review all bids received.
5. Once a service provider is selected, it is time to begin contract negotiations. Contract negotiations are sometimes the most complicating factor. Service providers typically send boilerplate contracting language which is not acceptable to the consortium. This results in contract negotiations to ensure that the term of the contract is co-terminus for any and all circuit purchased under the contract; contract modification language to allow for site/service substitutions, and non-appropriations language. Small service providers can typically make necessary changes fairly quickly. But larger service providers do not move quickly when changing language in the contract, even if those changes are done using a contract addendum. Consortium applicants need a minimum of thirty days to negotiate contracts.

⁷ *Id.* ¶ 246. See “Applicants are free to extend the time period for receiving bids beyond the 28 days from the posting of Form 461 and may do so without prior approval.” See also “We encourage HCPs contemplating more complex projects (including those with an infrastructure component) to utilize a longer bidding period, as done by many Pilot Projects.”

⁸ *Id.* . ¶ 247. See “... [T]he level of documentation should be appropriate for the scale and scope of the services for which support is requested. Thus, for example, we expect that the documentation for a large network project will be more extensive than for an individual HCP seeking support for a single circuit.”

6. Creation of the Form 462 "package" is very time consuming. We have reason to believe that USAC and the FCC do not appreciate the level of effort required by consortium applicants to submit a truly complete 462 "package" to USAC for review. We also have learned through experience that submitting the bare minimum amount of paperwork required through My Portal is not beneficial. If we are unable to produce additional paperwork in fourteen days, USAC will deny our funding request. A complete Form 462 package includes: Contract(s), Network Cost Worksheet, competitive bid documentation including all bids received, cost effectiveness evaluation, award letters, cost allocation for ineligible entities or components, and evidence of a viable source of the 35 percent contribution. As a consortium applicant, we have found that we need at least thirty days to collate and organize all of the data required to submit the Form 462. We especially need this time to create the Network Cost Worksheet to request funding for every eligible HCP in our consortium and the products/services that the chosen vendor will provide.

As outlined above, a total of 120 days from the Form 461 being available to the window closing to file a Form 462 is setting consortium applicants up for failure. This is completely contrary to the FCC goals outlined in the Healthcare Connect Fund Order.

In addition, our consortium competitively bid for services in FY2017. To date, USAC has not issued a single funding commitment letter for this funding year. The contract(s) that were signed as a result of that competitive bid remain valid contracts. But, we have no idea if USAC will grant Evergreen⁹ status to our contract(s). We ask that the FCC direct USAC to immediately notify consortium applicants that bid in FY2017 whether or not their contract(s) will be granted Evergreen status, which allows the applicant to avoid competitive bidding for FY2018. If we do not receive notification of Evergreen status, we will be forced to go through the competitive bid process again in FY2018, unnecessarily.

We appreciate your consideration. We ask that the FCC direct USAC to extend the filing deadline of the FCC Form 462 for FY2018 to June 30, 2018 to give consortium applicants a reasonable opportunity to file for funding for FY2018.

Sincerely,


Amitava Banerjee
Associate Vice President
Catholic Health Initiatives

⁹ 47 C.F.R. § 54.642(h)(4)